

## STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

### TRANSFER OF RESOURCES

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#### Citation

1902(f) and 1917 of the Act. The agency provides for the denial of eligibility by reason of disposal of resources for less than fair market value. See page 8 & 9 of this Supplement for procedures applicable to all transfers of resources.

A. Except as noted below, the criteria for determining the period of ineligibility are the same as criteria specified in §1613(c) of the Social Security Act (Act).

1. Transfer of resources other than the home of an individual who is an inpatient in a medical institution.

- a. ☒ The agency uses a procedure which provides for a total period of ineligibility greater than 24 months for individuals who have transferred resources for less than fair market value when the uncompensated value of disposed of resources exceeds \$12,000.00. This period bears a reasonable relationship to the uncompensated value of the transfer. The computation of the period and the reasonable relationship of this period to the uncompensated value is described as follows:

See pages 8 & 9 of this supplement. This transfer of resources rule includes the transfer of the former residence of an inpatient in a medical institution.

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- b. ☐ The period of ineligibility is less than 24 months, as specified below.
- c. ☒ The agency has provisions for waiver of denial of eligibility in any instance where the State determines that a denial would work an undue hardship.

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2. Transfer of the home of an individual who is an inpatient in a medical institution.

☐ A period of ineligibility applies to inpatients in an SNF, ICF or other medical institution as permitted under §1917(c)(2)(B)(i).

- a. Subject to the exceptions on page 2 of this supplement, an individual is ineligible for 24 months after the date on which he disposed of the home. However, if the uncompensated value of the home is less than the average amount payable under this plan for 24 months of care in an SNF, the period of ineligibility is a shorter time, bearing a reasonable relationship (based on the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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- b. ☐ Subject to the exceptions on page 2 of this supplement, if the uncompensated value of the home is more than the average amount payable under this plan as medical assistance for 24 months of care in an SNF, the period of ineligibility is more than 24 months after the date on which he disposed of the home. The period of ineligibility bears a reasonable relationship (based upon the average amount payable under this plan as medical assistance for care in an SNF) to the uncompensated value of the home as follows:

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No individual is ineligible by reason of item A.2 if--

- i. A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual can reasonably be expected to be discharged from the medical institution and to return to that home;
- ii. Title to the home was transferred to the individual's spouse or child who is under age 21, or (for States eligible to participate in the State program under title XVI of the Social Security Act) is blind or permanently and totally disabled or (for states not eligible to participate in the state program under title XVI of the Social Security Act) is blind or disabled as defined in §1614 of the Act.
- iii. A satisfactory showing is made to the agency (in accordance with any regulations of the Secretary of Health and Human Services) that the individual intended to dispose of the home either at fair market value or for other valuable consideration; or
- iv. The agency determines that denial of eligibility would work an undue hardship.

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3. 1902(f) States

- ☐ Under the provisions of §1902(f) of the Social Security Act, the following transfer of resource criteria more restrictive than those established under §1917(c) of the Act, apply:

- B. Other than those procedures specified elsewhere in the supplement, the procedures for implementing denial of eligibility by reason of disposal of resources for less than fair market value are as follows:
1. If the uncompensated value of the transfer is \$12,000 or less: the individual is ineligible for two years from the date of the transfer.
  2. If the uncompensated value of the transfer is more than \$12,000: the individual is ineligible two years, plus an additional 2 months for every \$1,000 or part thereof of uncompensated value over \$12,000, from the date of transfer.

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**Property Transfer** - An applicant for or recipient of Medicaid is ineligible for Medicaid if he transferred or otherwise disposed of his legal equitable interest in real or personal property for less than fair market value. Transfer of property precludes eligibility for two years from the date of the transfer if the uncompensated value of the property was \$12,000 or less. If the uncompensated value was over \$12,000 an additional two months of ineligibility will be added for each \$1,000 of additional uncompensated value (see following Table). "Uncompensated value" means the current market value of the property, or equity in the property, at the time it was transferred, less the amount of compensation (money, goods, service, et cetera) received for the property.

**Exceptions to this provision are:**

- 1) When the transfer was not made with the intent of establishing or retaining eligibility for Medicaid or SSI. Any transfer shall be presumed to have been for the purposes of establishing or retaining eligibility for Medicaid or SSI unless the applicant/recipient furnishes convincing evidence to establish that the transfer was exclusively for some other purpose.
  - A. The applicant/recipient has the burden of establishing, by objective evidence of facts rather than statement of subjective intent, that the transfer was exclusively for another purpose.
  - B. Such evidence shall include evidence that adequate resources were available at the time of the transfer for the applicant/recipient's support and medical care including nursing home care, considering his or her age, state of health, and life expectancy.
  - C. The declaration of another purpose shall not be sufficient to overcome this presumption of intent.
  - D. The establishment of the fact that the applicant/recipient did not have specific knowledge of Medicaid or SSI eligibility policy is not sufficient to overcome the presumption of intent.
- 2) Retention of the property would have no effect on eligibility unless the property is a residence of an individual in a nursing home for a temporary period.
- 3) When transfer of the property resulted in compensation (in money, goods, or services) to the applicant/recipient which approximated the equity value of the property.
- 4) When the receiver of the property has made payment on the cost of the applicant/recipient's medical care which approximates the equity value of the property.

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Property Transfer continued.

- 5) When the property owner has been a victim of another person's actions, except those of a legal guardian, committee, or power-of-attorney, who obtained or disposed of the property without the applicant/recipient's full understanding of the action.
- 6) When prior to October 1, 1982, the Medicaid applicant transferred a prepaid burial account (plan) which was valued at less than \$1,500.00 for the purpose of retaining eligibility for SSI, and was found ineligible for Medicaid solely for that reason. The applicant, after reapplying, may be eligible regardless of the earlier transfer of a prepaid burial account if the applicant currently meets all other eligibility criteria.
- 7) When the property is transferred into an irrevocable trust designated solely for the burial of the transferor or his spouse. The amount transferred into the irrevocable burial trust, together with the face value of life insurance and any other irrevocable funeral arrangements, shall not exceed \$2,000 prior to July 1, 1988, and shall not exceed \$2,500 after July 1, 1988.

**PERIOD OF INELIGIBILITY DUE TO  
TRANSFER OF PROPERTY  
TABLE**

<u>Uncompensated Value of Property</u>		<u>Period of Ineligibility</u>
0	\$12,000.00	24 months
12,000.01	\$13,000.00	26 months
13,000.01	\$14,000.00	28 months
14,000.01	\$15,000.00	30 months
15,000.01	\$16,000.00	32 months

For each additional \$1,000.00 add two months of ineligibility.

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The preceding policy applies to eligibility determinations on and before June 30, 1988. The following policy applies to eligibility determinations on and after July 1, 1988.

1. The State plan provides for a period of ineligibility for nursing facility services, equivalent services in a medical institution, and home and community-based services in the case of an institutionalized individual (as defined in paragraph (3) of §1917(c) who, disposed of resources for less than fair market value, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on that date) or, if the individual is not entitled on the date of institutionalization, the date the individual applies for assistance while an institutionalized individual.
  - a. 30 months, or
  - b. the total uncompensated value of the resources so transferred, divided by the average cost, to a private patient at the time of application, of nursing facility services in the State.
2. An individual shall not be ineligible for medical assistance by reason of paragraph 1. to the extent that -
  - a. the resources transferred were a home and title to the home was transferred to -
    - (1) the spouse of such individual;
    - (2) a child of such individual who is under age 21, or is blind or disabled as defined in §1614 of the Social Security Act;
    - (3) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

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- (4) a son or daughter of such individual (other than a child described in clause 2) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual; and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;
- b. The resources were transferred to (or to another for sole benefit of) the community spouse as defined in §1924(h)(2) of the Social Security Act, or to the individual's child who is under age 21, or is blind or disabled as defined in §1614 of the Social Security Act.
- c. A satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary of United States Department of Health and Human Services) that
  - (1) the individual intended to dispose of the resources either at fair market value, or for other valuable consideration. To show intent to receive adequate compensation, the individual must provide objective evidence that:
    - (a) for real property, the individual made an initial and continuing effort to sell the property according to the "reasonable effort to sell" provisions of the Virginia Medicaid State Plan;
    - (b) for real or personal property, the individual made a legally binding contract that provided for receipt of adequate compensation in a specified form (goods, services, money, etc.) in exchange for the transferred property;
    - (c) an irrevocable burial trust of \$2,500 or less was established on or after July 1, 1988 as compensation for the transferred money;